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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Chimyere McCall, et al.,

10 Plaintiffs,

11 v.

12 Damon Charles Williams, et al.,

13 Defendants.  
14

No. CV-19-05126-PHX-SMB

**ORDER**

15 Pending before the Court is Plaintiffs/Counterdefendants', Chimyere McCall and  
16 Monroe McCall's ("Plaintiffs"), Motion for Partial Summary Judgment. (Doc. 54.)  
17 Defendants/Counterplaintiffs, Damon and Zene Williams ("Defendants"), responded,  
18 (Doc. 59), and Plaintiffs replied. (Doc. 60.) Plaintiffs have requested oral argument, but the  
19 Court elects to rule without oral argument, finding that it is unnecessary. *See* LRCiv. 7.2(f).

20 **I. BACKGROUND**

21 The procedural background has been explained in a previous order of the Court  
22 (Doc. 61) and will not be repeated in full here but is incorporated for purposes of this ruling.  
23 Plaintiffs bring this Motion for Summary Judgment seeking summary judgment on their  
24 claims for "Special Action/Declaratory Judgment declaring the Judgment Liens to be  
25 invalid" and their claim for "Wrongful Lien." (Doc. 54 at 1-2.) Plaintiffs do not seek  
26 summary judgment for their Racketeering claim. (*Id.*)

27 The following factual information is undisputed. United Solutions Corp. ("USC")  
28 was formed on March 21, 2006. Defendant Damon Charles Williams ("Mr. Williams") was

1 USC's sole shareholder and officer until the company was dissolved in 2011. On August  
 2 3, 2007, USC filed a lawsuit against Plaintiffs in Maricopa County Superior Court. USC  
 3 was granted a judgment against Plaintiffs in the amount of \$1,043,375.00, plus costs of  
 4 \$2,451.81, on June 25, 2009.

5 On or about May 27, 2010, USC, through counsel, filed an application for  
 6 Registration of Foreign Judgment in the Circuit Court of Washington County, Arkansas.  
 7 On November 4, 2010 McCall filed a Voluntary Petition for Chapter 7 Bankruptcy in the  
 8 United States Bankruptcy Court for the Western District of Arkansas.<sup>1</sup> Plaintiffs filed the  
 9 required schedule in the bankruptcy case and included the Judgment in the Maricopa  
 10 County case as well as the registration of the judgment in Arkansas. USC filed an adversary  
 11 Proceeding to object to and determine dischargeability of this debt within the bankruptcy  
 12 case. On September 29, 2011, the Bankruptcy Court dismissed the adversary case and  
 13 found the debt to be dischargeable.<sup>2</sup> Neither USC nor Defendants appealed the order  
 14 dismissing the adversary action and finding the debt dischargeable. On October 17, 2011,  
 15 the bankruptcy court issued the "Discharge of Debtor", which stated "**IT IS ORDERED:**  
 16 The debtor is granted a discharge under Section 727 of title 11, United States Code."  
 17 Neither USC nor Defendants ever appealed the bankruptcy order. On March 23, 2018, Mr.  
 18 Williams filed an "Affidavit for Renewal of Judgment" in Maricopa County Superior Court  
 19 designating himself as "Assignee" of the judgment. The same day, Mr. Williams also  
 20 recorded a judgment lien with the Maricopa County Recorder.

## 21 **II. LEGAL STANDARD**

22 Summary judgment is appropriate when "there is no genuine dispute as to any  
 23 material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P.  
 24 56(a). A material fact is any factual issue that might affect the outcome of the case under  
 25 the governing substantive law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

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26  
 27 <sup>1</sup> Defendants objects to the exhibits in support of this statement but states no basis for the  
 objection.

28 <sup>2</sup> Defendants have also alleged in this case that the Plaintiffs' bankruptcy action was filed  
 in bad faith, but that is not an issue for this Court to decide.

1 A dispute about a fact is “genuine” if the evidence is such that a reasonable jury could  
2 return a verdict for the non-moving party. *Id.* “A party asserting that a fact cannot be or is  
3 genuinely disputed must support the assertion by . . . citing to particular parts of materials  
4 in the record” or by “showing that materials cited do not establish the absence or presence  
5 of a genuine dispute, or that an adverse party cannot produce admissible evidence to  
6 support the fact.” Fed. R. Civ. P. 56(c)(1)(A), (B). The Court need only consider the cited  
7 materials, but it may also consider any other materials in the record. *Id.* 56(c)(3). Summary  
8 judgment may also be entered “against a party who fails to make a showing sufficient to  
9 establish the existence of an element essential to that party’s case, and on which that party  
10 will bear the burden of proof at trial.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

11 Initially, the movant bears the burden of demonstrating to the Court the basis for the  
12 motion and “identifying those portions of [the record] which it believes demonstrate the  
13 absence of a genuine issue of material fact.” *Id.* at 323. If the movant fails to carry its initial  
14 burden, the nonmovant need not produce anything. *Nissan Fire & Marine Ins. Co. v. Fritz*  
15 *Cos.*, 210 F.3d 1099, 1102–03 (9th Cir. 2000). If the movant meets its initial responsibility,  
16 the burden then shifts to the nonmovant to establish the existence of a genuine issue of  
17 material fact. *Id.* at 1103. The nonmovant need not establish a material issue of fact  
18 conclusively in its favor, but it “must do more than simply show that there is some  
19 metaphysical doubt as to the material facts.” *Matsushita Elec. Indus. Co. v. Zenith Radio*  
20 *Corp.*, 475 U.S. 574, 586 (1986). The nonmovant’s bare assertions, standing alone, are  
21 insufficient to create a material issue of fact and defeat a motion for summary judgment.  
22 *Liberty Lobby*, 477 U.S. at 247–48. “If the evidence is merely colorable, or is not  
23 significantly probative, summary judgment may be granted.” *Id.* at 249–50 (citations  
24 omitted). However, in the summary judgment context, the Court believes the nonmovant’s  
25 evidence, *id.* at 255, and construes all disputed facts in the light most favorable to the  
26 nonmoving party. *Ellison v. Robertson*, 357 F.3d 1072, 1075 (9th Cir. 2004). If “the  
27 evidence yields conflicting inferences [regarding material facts], summary judgment is  
28 improper, and the action must proceed to trial.” *O’Connor v. Boeing N. Am., Inc.*, 311 F.3d

1 1139, 1150 (9th Cir. 2002).

### 2 **III. DISCUSSION**

#### 3 **A. Request for Judicial Notice**

4 Plaintiffs first request that the Court take judicial notice of certain “court records  
5 and other government records” pursuant to Rule 201, Fed. R. Civ. P. (Doc. 54 at 2-3.)  
6 Defendants argue that it would be inappropriate for the Court to take judicial notice of these  
7 documents. (Doc. 59 at 3-4.) The Court, in the Order on the Motion to Dismiss filed  
8 previously, took judicial notice of the underlying state court action, the bankruptcy  
9 proceedings in the United States Bankruptcy Court for the Western District of Arkansas,  
10 and the related Judgment Liens recorded by Maricopa County. (Doc. 61 at 5.) After taking  
11 judicial notice, the factfinder must accept the fact as conclusive. *See* Fed. R. Evid. 201(f).  
12 A Court takes judicial notice of another court’s opinion “not for the truth of the facts recited  
13 therein, but for the existence of the opinion, which is not subject to reasonable dispute over  
14 its authenticity.” *Lee v. City of Los Angeles*, 250 F.3d 668, 689-90 (9th Cir. 2001). Thus,  
15 the Court will reject arguments from Defendants that the orders from the Bankruptcy Court  
16 were invalid. For the reasons explained in the Court’s previous order (Doc. 61), the Court  
17 will consider the documents as judicially noticed in ruling on this motion as well.

18 The Court has taken judicial notice of the Bankruptcy Court’s order from September  
19 29, 2011, which dismissed USC’s action against Plaintiffs with prejudice for USC’s failure  
20 to prosecute the case. (Doc. 55-1, Ex. 12 at 1.) The order states, “The claim of Plaintiff, if  
21 any, is dischargeable.” (*Id.*) As Defendants concede, neither USC nor Defendants ever  
22 appealed the Bankruptcy Court’s order. (Doc. 55 ¶ 13; Doc. 59, Att. 1 ¶ 13.) The Court has  
23 also judicially noticed the Discharge of Debtor issued by the Bankruptcy Court on October  
24 17, 2011. (Doc. 55-1, Ex. 14.) The Discharge of Debtor states, “IT IS ORDERED: The  
25 debtor is granted discharge under section 727 of title 11, United States Code, (the  
26 Bankruptcy Code).” (*Id.* at 1.) Additionally, the Court has taken judicial notice of both  
27 judgment liens recorded by Maricopa County. (Doc. 55-1, Exs. 17-19.)

#### 28 **B. Request to Amend Complaint**

1           Plaintiffs also move the Court to deem their Complaint amended pursuant to Rule  
2   15(b)(2), Fed. R. Civ. P., to encompass the second lien that Mr. Williams filed after  
3   Plaintiffs had already filed their Complaint in this case. (Doc. 54 at 9.) Indeed, Mr.  
4   Williams filed the second lien on May 30, 2019, over two months after Plaintiffs filed their  
5   Complaint. Defendants do not object to this request in their opposition. Thus, the Court  
6   grants Plaintiffs' request and deems the Plaintiffs' Complaint amended to encompass the  
7   second lien that was filed on May 30, 2019.

### 8           **C. Declaratory Judgment Pursuant to A.R.S. § 33-420**

9           The Plaintiffs are entitled to summary judgment on their request for a Declaratory  
10   Judgment declaring that the liens are invalid. An Arizona statute prohibits a person who  
11   purports to claim a lien against real property to cause a document asserting such a claim to  
12   be recorded in the county recorder's office knowing or having reason to know that the  
13   document is groundless or is otherwise invalid. A.R.S. § 33-420(A). The statute also  
14   provides that the person who records the invalid lien is liable to the owner of the property  
15   for "the sum of not less than five thousand dollars, or for treble the actual damages caused  
16   by the recording, whichever is greater, and reasonable attorney fees and costs of the  
17   action." A.R.S. § 33-420(A). "A document purporting to create an interest in, or a lien or  
18   encumbrance against, real property not authorized by statute, judgment, or other specific  
19   legal authority is presumed to be groundless and invalid. A.R.S. § 33-420(D). The owner  
20   of the real property is authorized by statute to bring an action to immediately clear title to  
21   the real property for liens which are groundless or otherwise invalid. A.R.S. § 33-420(B).  
22   Under Arizona law, recording an affidavit of renewal of judgment creates a lien on real  
23   property of the judgment debtor. A.R.S. § 12-1613(D). A discharge under Chapter 11  
24   "voids any judgment at the time obtained" and operates as an injunction against the  
25   commencement or continuation of an action to recover such debt. 11 U.S.C. § 524(a)(1)-  
26   (2).

#### 27           **1. Invalidity of the Liens**

28           In order for the Plaintiffs to obtain an order clearing title to their real property, they

1 must show that the liens are groundless or otherwise invalid. The Court finds that both liens  
 2 Mr. Williams filed in Maricopa County – one on March 23, 2018 (Doc. # 2018-0218732)  
 3 and the other on May 30, 2019 (Doc. # 2019-0397763) – are invalid or groundless. The  
 4 plain language of the Bankruptcy Court’s Discharge of Debtor clearly discharged the  
 5 judgment that USC obtained in Maricopa County against Plaintiffs on June 25, 2009. The  
 6 two liens later filed by Mr. Williams in Maricopa County clearly seek to enforce USC’s  
 7 June 2009 judgment. Mr. Williams attached a copy of the judgment to the first-filed lien.  
 8 (Doc. 55-1 Ex. 17-18.) The second-filed lien states that it is for an original judgment for  
 9 the exact same amount as the June 2009 judgment, showing that Mr. Williams intended to  
 10 enforce the discharged judgment. Thus, the Court finds that both liens are invalid or  
 11 groundless pursuant to A.R.S. § 33-420(B) and (D), and the Court will grant summary  
 12 judgment in the form of a declaratory judgment ruling that both liens are invalid or  
 13 groundless.

## 14 **2. Knowledge of the Defendants**

15 In order for Plaintiffs to show that Mr. Williams violated A.R.S. § 33-420(A), they  
 16 must show that the Mr. Williams filed a lien against real property knowing or having reason  
 17 to know that the document was groundless or otherwise invalid.

18 The Court finds that Plaintiffs have proven by a preponderance of the evidence that  
 19 Mr. Williams knowingly filed an invalid lien in Maricopa County on May 30, 2019 in  
 20 violation of A.R.S. § 33-420(A). The Notice of Recipients attached to the Discharge of  
 21 Debtor lists both USC’s Arkansas counsel and Arizona counsel as entities that received  
 22 notice of the discharge. (*Id.* at 3.) Nonetheless, the Defendants dispute this fact “as there is  
 23 not evidence that Williams agreed to be served process by way of either the attorney that  
 24 Withdraw [*sic*] from the case or an attorney who never made an entry of appearance in the  
 25 instant matter.” (Doc. 59-1 ¶ 15.) Plaintiffs have produced no other evidence conclusively  
 26 showing that Mr. Williams knew of the discharge of the judgment prior to filing the initial  
 27 lien with Maricopa County. Thus, the Court is precluded from finding that Mr. Williams  
 28 knowingly filed that lien. However, Mr. Williams recorded the second lien with Maricopa

1 County on May 30, 2019, over a month after he had waived service of the Complaint in  
2 this matter on April 16, 2019. (Doc. 1-1 at 27.) Therefore, he clearly had notice that the  
3 second lien he filed in May 2019 was invalid or groundless. Accordingly, the Court finds  
4 that there is a dispute of material fact as to whether Mr. Williams filed the first lien knowing  
5 that the lien was invalid or groundless in violation of A.R.S. § 33-420, but that there is no  
6 dispute as to any material fact that Mr. Williams filed the second invalid lien on May 30,  
7 2019 with notice that the lien was invalid in violation of A.R.S. § 33-420. Therefore, the  
8 Court grants summary judgment as to the second-filed lien but not the first.

9 Contrary to the argument made by Defendants, 11 U.S.C. § 524(e) does not validate  
10 the liens filed by Mr. Williams. The subsection states that “discharge of a debt of the debtor  
11 does not affect the liability of any other entity on, or the property of any other entity for,  
12 such debt. 11 U.S.C. § 524(e). Although Mr. Williams construes this subsection to mean  
13 that only USC’s judgment was discharged in bankruptcy, leaving his own interest  
14 unaffected, the Court disagrees. It is clear from examining the liens filed that the judgment  
15 for which Mr. Williams sought both liens was the same one that USC obtained in the  
16 Maricopa County action from June 25, 2009. Both liens list the exact same amount of the  
17 original judgment (\$1,043,375), and the first-filed lien has the original judgment attached.  
18 (Doc. 55-1 at Ex. 17-19.) Defendants do not purport to have a separate judgment against  
19 the Plaintiffs, and he claims on the liens that he is the “Assignee” of the judgment. (Doc.  
20 55-1, Exs. 17, 19.) Therefore, 11 U.S.C. § 524(e) does not advance his argument.

21 The Court declines to entertain any argument from Defendants that the Bankruptcy  
22 Court’s decision to dismiss its case and discharge the debt was in error. Simply put, the  
23 function of this Court is not to question the judgment of Bankruptcy Courts in other  
24 jurisdictions. If the Defendants took issue with the decision of the Bankruptcy Court, they  
25 should have promptly challenged or appealed the decision *in that venue* which the  
26 Defendants admit that they did not do. This Court is without jurisdiction to question or  
27 alter its rulings.

#### 28 **IV. CONCLUSION**



1 For the reasons discussed above, summary judgment is granted for the Plaintiffs'  
2 claim for a Declaratory Judgment for both liens, and for Plaintiffs' claim for wrongful lien  
3 under A.R.S. § 33-420(A) as to the lien recorded on May 30, 2019. Summary judgment is  
4 denied for the lien recorded on March 23, 2018. Pursuant to A.R.S. § 33-420(A), the Court  
5 determines that Defendants are liable to Plaintiffs for the sum of \$5,000, and Defendants  
6 are also liable to the Plaintiffs for attorney's fees and costs. Plaintiffs may file a motion for  
7 attorney's fees and costs with this Court. Plaintiff's claim for Racketeering and for  
8 Wrongful Lien for the lien filed on March 23, 2018 are the only remaining claims in this  
9 case.

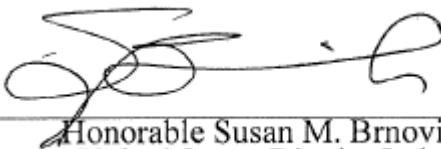
10 Accordingly,

11 **IT IS ORDERED** granting in part and denying in part Plaintiffs' Motion for Partial  
12 Summary Judgment. (Doc. 54.) The motion is granted as to Plaintiffs' claim for a  
13 Declaratory Judgment declaring that the liens are invalid or groundless pursuant to A.R.S.  
14 § 33-420 and granted as to Plaintiffs' claim that Mr. Williams knowingly recorded a lien  
15 with Maricopa County on May 30, 2019 knowing or having reason to know that the lien  
16 was invalid or groundless pursuant to A.R.S. § 33-420(A). The motion is denied for  
17 Plaintiffs' claim that Mr. Williams recorded a lien with Maricopa County on March 23,  
18 2018 knowing or having reason to know that the lien was invalid or groundless pursuant to  
19 A.R.S. § 33-420(A).

20 **IT IS FURTHER ORDERED** directing the Clerk to enter judgment for Plaintiff  
21 for \$5,000 for its claim for wrongful lien pursuant to A.R.S. § 33-420(A).

22 **IT IS FURTHER ORDERED** granting Plaintiffs' request for declaratory  
23 judgment clearing title to their property from the liens filed in Maricopa County,  
24 documents numbered 2018-0218732 and 2019-0397763 because those liens are invalid and  
25 groundless pursuant to A.R.S. § 33-420(B).

26 Dated this 9th day of February, 2021.

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Honorable Susan M. Brnovich  
United States District Judge